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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 743

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 773

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

ADDITIONAL STATUTES, RULES, AND BILLS INVOLVED

STATUTES:

Alaska Statute 14.20.170

Sec. 14.20.170 *Definition of cause.* (a) The causes for nonretention are

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner;

(2) immorality, which is defined as conduct of the person tending to bring the individual con-

cerned or the teaching profession into public disgrace or disrespect;

(3) substantial noncompliance with the school laws of the state or the regulations of the department of or the applicable regulations of any other governmental agency or the employing school district.

Alaska Statute 14.20.095

Sec. 14.20.095 *Right to Comment and Criticise Not to be Restricted.* No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

RULES:

Alaska Supreme Court Rule 11 (a)(8)

This brief shall contain in the order here stated the following . . . (8) The argument, stating clearly the points of fact and of law being discussed, with references to the pages of the record and authorities relied upon in support of each point. When a statute, regulation, ordinance, or opinion is cited, so much thereof as may be deemed necessary to the decision of the case shall be set out verbatim, either at this point, or if the matter quoted is lengthy, in an appendix.

BILLS:

House Bill No. 25 (Alaska Legislature, 1965)

*Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to

perform *the teacher's customary* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and reenacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

Senate Bill No. 6 (Alaska Legislature, 1965)

"Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's *teaching* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and reenacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

THE DECISION OF THE SUPREME COURT OF ALASKA RESTS ON AN ADEQUATE NON-FEDERAL GROUND

Petitioners first alluded to the federal constitutional question presented here in the argument portion of their brief to the Supreme Court of Alaska.[1] The complete discussion of this question was as follows:

[1] Petitioners do not appear to have complied with Rule 23 (f) of the Rules of the Supreme Court of the United States which requires that the statement of the case in a petition for writ of certiorari seeking review of a state court judgment specify the stage in the state proceedings at which and the manner and method in which the federal questions sought to be reviewed were raised. Moreover, it is an established rule in Alaska, although not expressly relied upon by the court in this case, that questions not raised in the original proceedings will not be considered on appeal. *Pollastrine* v. *Severence*, 375 P. 2d 528, 531 (Alaska, 1962); *Lumberman's Mutual Casualty Co.* v. *Continental Casualty Co.*, 387 P. 2d 104, 109 (Alaska, 1963).

There are involved in this appeal issues far more fundamental than those heretofore mentioned. We submit that both the School Board and the State Board contrived to deprive appellants of valuable rights without according them due process of law. We further submit that the construction placed on #2(b) and #2(c) of Ch. 71, S.L.A. 1957 by the School Board and by the State Board and sanctioned by the lower court effectively abridged appellants' constitutional rights to assemble and speak freely.

Ours is a free society only because individual men are protected in their individual rights and liberties. It is both an anomaly and blessing that the very charters which establish our State and Federal governments also protect individual men in the exercise of their individual rights and liberties. The freedoms to speak out, to voice protest, to utter grievances and to assemble for such purposes are freedoms protected in both the Constitution of the United States (Amendments I, XIV #1) and the Constitution of the State of Alaska (Article I #5, 6 and 7). Appellants Watts and Blue legitimately exercised those constitutional rights—with heavy personal and financial sacrifice. The interpretation of Ch. 71, S.L.A. 1957 adopted by the School Board and by the State Board, putting appellants' teaching jobs in jeopardy because they voiced to others their dissatisfaction with the Seward School Board and the Superintendent, was an unconstitutional interpretation of that Act. The hearings conducted by the School Board and by the State Board, for the purpose of confirming the termination of appellants' employment as teachers, resulted in decisions which were palpably contrary to the law and evidence. This was a deprivation of appellants' personal liberties and property rights without due process of law.

Therefore, for these very fundamental reasons, originating in a political philosophy uniquely

> American, the ruling of the lower court must be reversed. If this court concurs in our contention then the decision of this case may endure as one additional segment of the bulwark against those ever-pressing currents of ignorance and acrimony always fed by men of fearful and faint heart.
>
> Appellants' brief, pages 30 and 31.

Respondent, Seward School Board, argued in its brief that petitioners' constitutional argument should not be considered because, among other things, it was too cursory and amorphous to permit reasoned and informed adjudication.

Petitioners, in their reply brief, apparently conceded the correctness of respondent's argument on this point. They stated, in full:

> THERE IS SOME MERIT IN APPELLEE'S CONTENTION THAT THE CONSTITUTIONAL ARGUMENT ADVANCED IN APPELLANTS' BRIEF IS AT BEST CURSORY
>
> This we must admit. However, in passing, we will point out that the case of *Veal* v. *Newlin, Inc., et al.*, Alaska, 1961, 367 P. 2d 155 is not in point: in that case the appellant included in his brief a Specification of Error which he failed to argue in his brief. We did argue the constitutional point, in support of our two Specifications of Error. But this part of our brief was admittedly cursory.
>
> Appellants' Reply Brief, page 6.

The Supreme Court of Alaska, in its opinion, declined to consider petitioner's constitutional argument. The court stated:

> The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble and speak freely have been abridged in this case and that they have been de-

> prived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory manner and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.

This was not an annunciation of a novel procedural rule of which petitioners could not have been apprised. Rule 11(a)8 of the Rules of the Supreme Court of Alaska, which was in existence when petitioners prepared their brief, provides in relevant part:

> This brief shall contain in the order here stated the following ... (8) The argument, stating clearly the points of fact and of law being discussed, with references to the pages of the record and authorities relied upon in support of each point.

The Supreme Court of Alaska has consistently held that cursory or non-specific discussions in which no attempt is made, by the citation of case law or otherwise, to relate the ideas advanced to the facts of the case do not comply with Rule 11(a) (8), and will not be considered by the court. *Veal* v. *Newlin, Inc.*, 367 P. 2d 155, 156-57 (Alaska, 1961); *Parks* v. *Brown*, 368 P. 2d 220, 222 (Alaska, 1962); *Gregory* v. *Padilla*, 379 P. 2d 951, 954-55 (Alaska, 1963); *Thomson* v. *Wheeler Construction Co.*, 385 P. 2d 111, 114 (Alaska, 1963); *Olson* v. *McRae*, 389 P. 2d 576, 578 (Alaska, 1964); *Preferred General Agency of Alaska, Inc.* v. *Rafetto*, 391 P. 2d 951, 953 (Alaska, 1964).

In *Veal* v. *Newlin*, 367 P. 2d 155 (Alaska, 1961), the court stated:

> But the brief contained no argument as to this issue in accordance with another requirement of the rule. It consisted only of a cursory statement to the effect that the trial judge unduly emphasized

> the issue of proximate cause to the point where he was telling the jury how to decide the case. The point was not elaborated upon. We must conclude from this that Veal's counsel believed the alleged error was not of sufficient importance to merit serious consideration by this court . . . .
>
> 367 P. 2d at 156.
>
> We believe that an appellant has a particular obligation to adequately prepare his case so as to be of assistance to this court. That was not done in this case. We consider this an appropriate occasion to remind counsel that the presentation of cases without adequate preparation discredits the bar and obstructs the administration of justice.
>
> 367 P. 2d at 157.

In *Parks* v. *Brown,* 368 P. 2d 220 (Alaska, 1962), the court said:

> The fact that much of appellants' brief is given to philosophical arguments by counsel on what he thinks the law should be in situations pertinent to his case and the further fact that the brief is woefully lacking in case decisions to support any of the ideas advanced therein leads us to the conclusion that the appeal is frivolous and was not taken in good faith.
>
> 368 P. 2d at 222.

And, in *Gregory* v. *Padilla,* 379 P. 2d 951 (Alaska, 1963), the court stated:

> With respect to his statement that exhibit 5 was not the best evidence and was hearsay, the defendant not only failed to cite us to any authority in support of these propositions or point out wherein he was prejudiced by admission of the document, but he has not even advanced in his brief what could be reasonably taken for an argument such

as is called for by Supreme Court Rule 11 (a) (8). Accordingly, we need not consider these two claims of the defendant.

379 P. 2d at 954-55.

It should therefore be clear that petitioners had fair prior warning of the requirements which were the basis for the court's decision in refusing to consider their constitutional argument. It should also be clear that petitioners did not meet these requirements. Their constitutional argument alludes to three federal constitutional infirmities: denial of procedural due process, abridgment of the freedom of speech, and abridgment of the right to assemble. These are complex and difficult points; a decision on any one of them would have fundamental implications in Alaska. Yet, petitioners did essentially nothing more than to refer generally to the First and Fourteenth Amendments to the Constitution of the United States. No attempt was made to relate the facts of the case to these amendments and no case law was cited to assist the court in rendering a reasoned and informed decision. Under these circumstances, the conclusion of the Supreme Court of Alaska that petitioners had failed to meet their obligation to present a reasonably helpful and cogent argument seems both justified and consistent with the court's previous rulings.

It cannot be said that the rule relied on by the Alaska Supreme Court constitutes an unreasonable interference with the vindication of federal rights. Many other state courts impose similar requirements. E.g., *Joseph* v. *State,* 236 Ind. 529, 141 N.E. 2d 109, 117 (1957); *Stewart* v. *Hilton,* 247 Iowa 988, 77 N.W. 2d 637, 642 (1956); *Miller* v. *Board of County Commissioners of Natrona County,* 76 Wyo. 502, 337 P. 2d 262, 271 (1959).

Nor is there any basis from which an inference might be drawn that the Supreme Court of Alaska interposed its rule in order to deprive petitioners of their federal rights.

Under these circumstances it is respectfully submitted that no federal question is before this court. *Wolfe* v. *North Carolina*, 364 U.S. 177 (1960); *Ellis* v. *Dixon*, 349 U.S. 458 (1955); *Edelman* v. *California*, 344 U.S. 357 (1953).

THE QUESTION PRESENTED BY PETITIONERS WILL PROBABLY IN THE VERY NEAR FUTURE BE OF MERELY ISOLATED SIGNIFICANCE BECAUSE BOTH HOUSES OF THE ALASKA LEGISLATURE HAVE PASSED BILLS WHICH RECTIFY ANY POSSIBLE CONSTITUTIONAL INFIRMITY IN THE STATUTE UNDER WHICH PETITIONERS WERE NONRETAINED

Petitioners' nonretention as teachers was based on conduct which was found to be immoral under the artful definition of that term contained in Sec. 37-5-12 (b) ACLA Cum. Supp. (1957). "Immorality" is there defined as "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect." In 1962 this definition, along with other previously existing nonretention provisions, was recodified as A.S. 14.20.170 (a):

> Sec. 14.20.170 Definition of cause. (a) The causes for nonretention are
>
> (1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner;
>
> (2) immorality, which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;

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(3) substantial noncompliance with the school laws of the state or the regulations of the department or the applicable regulations of any other governmental agency or the employing school district.

In February of 1965 each house of the Alaska Legislature passed nearly identical bills, both of which would repeal the definition of immorality under which petitioners were nonretained and re-define that term as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude."[2]

---

[2] Senate Bill No. 6; House Bill No. 25 (1965).

Senate Bill No. 6 provides:

"Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's *teaching* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and re-enacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

House Bill No. 25 provides:

"Section 1. AS 14.20.170(1) is amended to read:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform *the teacher's customary* duties in a satisfactory manner;

"Section 2. AS 14.20.170(2) is repealed and re-enacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

These bills are presently in committee where the differences in their respective sections (1) are being resolved.

Since both houses of the Alaska Legislature have passed bills which are identical with respect to the manner in which the present definition of immorality is to be changed, it is highly probable that such change is soon to be enacted.[3] Of course, the result of this amendment will be that conduct similar to that of petitioners will no longer be a ground for nonretention. And such amendment, if it is law when the court considers the petition,[4] will constitute a sound basis for the denial of certiorari. *Rice* v. *Sioux City Memorial Cemetery, Inc.*, 349 U.S. 70 (1955); *District of Columbia* v. *Sweeney*, 310 U.S. 631 (1940).

CONCLUSION

For the foregoing reasons respondent prays that the petition for certiorari be denied or, if necessary, that

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[3] A bill obviously meant to complement House Bill No. 25 or Senate Bill No. 6 was formally enacted by the Alaska Legislature and signed by the Governor in the week of March 8, 1965. This act, which originated as House Bill No. 26 (1965) provides:

"Section 1. AS 14.20 is amended by adding a new section to Article 2 to read:

> Sec. 14.20.095. RIGHT TO COMMENT AND CRITICISE NOT TO BE RESTRICTED. No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

[4] Respondent will advise the clerk of all developments respecting House Bill No. 25 and Senate Bill No. 6, and will file a supplemental brief pursuant to Rule 41 (5) when and if either bill is enacted.

the final decision on the petition be postponed for a short time pending the expected imminent action of the Alaska Legislature which would rectify the claimed constitutional error.

Respectfully submitted,

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Dated: March 22, 1965